

Ex E
46. The method according to claim 44 further comprising cutting at least one of the forms parallel to a longitudinal axis and stacking both pieces.

REMARKS

This paper is responsive to the Office Action dated June 12, 2002, corresponding to the above-identified patent application. Claims 3-16 and 39-46 are pending, including independent claims 3, 39, 43 and 44.

Claims 3-16 were rejected under 35 U.S.C. § 112, second paragraph as being indefinite. In this response, Applicant has amended claim 3, for clarity, to recite “between the pair of opposing foam panels” rather than “between either opposing panel” as originally presented. Applicant submits that this clarifying amendment does not narrow the scope of the claim and that claim 3 as amended is definite. Accordingly, Applicant requests withdrawal of the Section 112 rejection of claims 3-16.

Claims 3-16¹ were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,896,714 issued to Patrik M. Cymbala et al. (“Cymbala”). Applicant respectfully traverses this rejection, because a *prima facie* case of anticipation has not been made out. Specifically, the Examiner has failed to explain how Cymbala teaches or suggests each of the elements set forth in claims 3-16. Notwithstanding the lack of explanation, Applicant has

¹ In this Office Action, claims 3-16 were rejected as a group as anticipated by three separate references. Applicant submits that these “group” rejections are improper for at least two reasons. First, MPEP § 904.03 urges the Examiner to avoid multiplying references to keep from unnecessarily burdening prosecution. Here, the Examiner has improperly rejected the group of claims as being anticipated by the multiple references of Cymbala, Mensen, and Beliveau. Second, MPEP § 707.07(f) requires that “[a] plurality of claims should never be grouped together in a common rejection, unless that rejection is equally applicable to all claims in the group.” In the present application, claims 3-16 relate to various aspects of foam block concrete forms. The claims are of various scopes and include subject matter that is not addressed in the Examiner’s brief discussion in the group rejection. Accordingly, the rejection can not apply equally to each of the rejected claims, and it is, therefore, improper. Notwithstanding, Applicant has studied the references and put forth a good-faith effort to respond to the rejections.

studied the reference and submits that Cymbala fails to anticipate or render obvious any of claims 3-16.

Specifically, claim 3 recites “engaging means formed along the at least one pair of opposing longitudinal edges for removably retaining a longitudinal edge having similar engaging means formed therealong when adjacent thereto.” This claim element is written in means plus function form under 35 U.S.C. § 112, sixth paragraph, and accordingly should be interpreted according to the statute, which provides in relevant part that “such claim shall be construed to cover the corresponding structure . . . in the specification and equivalents thereof.” In this case, the structure corresponding to the means for retaining is found, for example, in the specification in the last paragraph of page 6 and continuing on to page 7. As set forth in the specification, the disclosed means for retaining involves the structure of alternating teeth that facilitate the stacking of foam forms upon and below adjacent foam forms on either opposing edge. That is to say the forms are capable of being stacked both right-side-up and up-side-down.

Conversely, Cymbala discloses panels that mate only in one direction, see e.g. Figure 1. Accordingly, Cymbala fails to teach or suggest “means . . . for . . . retaining” as claimed in the present invention, and, therefore, Applicant respectfully requests reconsideration and withdrawal of this rejection. Since claim 3 is the only independent claim under consideration and since it is patentable over Cymbala, claims 4-16, which depend from claim 3 directly or indirectly are also patentable for at least the same reason as set forth in connection with claim 3. Nevertheless, Applicant submits that claims 4-16 recite further elements neither taught nor suggested by Cymbala.

Regarding claim 4, the Examiner mentions nothing about the element that recites "an array of alternating teeth and sockets having substantially equal lateral dimensions. . . ." Nothing in Cymbala teaches or suggests this element. In fact, the tongues 22 and 26 and grooves 27 are very different from an array of alternating teeth and sockets having substantially equal lateral dimensions. In Cymbala, the tongues 26 are characterized as "short" tongues in contrast to the top tongue 22 (col. 6, lines 13-14). Therefore, the disclosure of Cymbala does not teach or suggest teeth and sockets having substantially equal dimensions as claimed. Accordingly, Cymbala not only fails to anticipate claim 4, for this additional reason but it further teaches away from the structure set forth in claim 4. Accordingly, Cymbala fails to anticipate or render obvious claim 4 for this additional reason. Further, claims 5-16 are patentable over Cymbala for at least the same reasons set forth in connection with claims 3 and 4.

Claims 3-16 were also rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No 5,390,459 issued to Jan H. Mensen ("Mensen"). The Examiner states that Mensen describes engaging means in the form of teeth and sockets, citing col. 4, lines 1-10. Applicant respectfully disagrees. The plugs 92 and walls 94 described in Mensen at col. 4 do not teach or suggest the means for retaining as claimed in the present invention, because the means for retaining is described in the specification as alternating teeth that facilitate the stacking of forms upon and below adjacent forms. Nothing in Mensen teaches or suggests this element. In fact, like Cymbala, Mensen teaches away from the claimed invention by disclosing structure that is clearly not capable of stacking in either orientation.

In Mensen, Figure 8 is described as a “top” structure, and Figure 9 is described as a “bottom” structure. Clearly only a bottom structure can connect to a top structure and not a top structure to a top structure. Accordingly, the building components disclosed in Mensen cannot be stacked in either orientation as claimed in the present invention, and therefore Mensen does not teach or suggest the means for retaining set forth in claim 3. Accordingly, claim 3 is patentable over Mensen, and Applicant requests that the Examiner withdraw the rejection. Since claims 4-16 depend either directly or indirectly from claim 3, claims 4-16 are allowable for at least the same reasons as their base claim.

Claims 3-16 were also rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No 6,230,462 issued to Jean-Louis Beliveau (“Beliveau”). The Examiner states *inter alia* that Beliveau describes engaging means in the form of teeth and sockets, pointing to the protrusions 18 and cavities 19 that are described at col. 3, lines 64-66.

However, as explained above, the means for retaining covers alternating teeth that facilitate the stacking of forms in either orientation. As set forth in Beliveau, the checkerboard-type relief corresponding to the protrusions and cavities of the bottom surface is in mirror symmetry with the pattern of the top. Accordingly, the mirror symmetry of the distinct top and bottom patterns disclosed in Beliveau again teaches away from means for retaining, because the forms cannot be stacked in either orientation. As set forth above, the means for retaining recited in claim 3 involves teeth and sockets that facilitate receiving either opposing edge of an adjacent block. As described on page 7 of the specification, that is advantageous, for example, so that when a block is cut in half, the top portion can be inverted, still engaging with the adjacent block below. Analogously to the structure in the

other two references, the structure of Beliveau works differently than that claimed, and the structure described in the references utterly fails to teach or suggest allowing a top surface to engage with another top surface, for example. Accordingly, claim 3 is neither anticipated nor rendered obvious by Beliveau.

Claim 6 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Beliveau in view of either Mensen or U.S. Patent No. 4,884,382 issued to David D. Horobin (“Horobin”). As set forth above in the discussion of the Beliveau, Applicant submits that Beliveau entirely fails to teach or suggest the claimed means for retaining. It would appear that based on this rejection the Examiner agrees that Beliveau fails to teach or suggest at least this element and seeks to remedy the deficiencies of Beliveau with either Mensen or Horobin. Applicant respectfully traverses this rejection because neither Mensen nor Horobin can remedy the deficiencies of Beliveau.

Specifically, as explained above in connection with the discussion of Mensen, Mensen fails to teach or suggest the means for retaining. The Examiner points to the vertical “ribs” and “groove” (col. 3, lines 66-67) disclosed in Horobin to support the proposition that Horobin teaches the means for retaining recited in claim 3. Applicant respectfully disagrees on this point. The ribs and groove taught in Horobin are very different from and incapable of performing as the claimed means for retaining. Accordingly, Horobin does not teach or suggest the means for receiving, and therefore a *prima facie* case of obviousness has not been established. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejection.

Appendix

3. A foam block concrete form comprising:

a pair of opposing foam panels spaced parallel from each other, each panel having at least one substantially planar rectangular segment having at least one pair of opposing longitudinal edges;

engaging means formed along the at least one pair of opposing longitudinal edges for removably retaining a longitudinal edge having similar engaging means formed therealong when adjacent thereto; and

a plurality of substantially planar ties positioned transverse to and between [either opposing panel] the pair of opposing foam panels, each tie including a web portion separating a pair of opposing flange members encapsulated within respective opposing foam panels along a respective lateral panel axis.



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